



A UNIVERSITY COMPUTER USERS' GUIDE TO PEER-TO-PEER FILE SHARING

Frequently Asked Questions

- **What is peer-to-peer file sharing?**

Peer-to-peer (a/k/a/ "P2P") is a term for a computer network protocol that allows individuals to obtain (download) and share (upload) with other computer users files that contain various types of content – e.g., software, publications, music, films, photos, etc. Commonly known peer-to-peer applications have included KaZaA, Morpheus, BitTorrent, iMesh, BearShare, Gnutella and Napster.

- **Is peer-to-peer file sharing illegal?**

Not necessarily. There are many legal uses for P2P file sharing. For example, P2P allows research teams to discuss ideas and share information in real or delayed time, without being in the same room or even the same state. Peer-to-peer applications have made possible the development of new technologies such as open-source software, which can be used, modified and passed along to other open-source users through P2P applications. Schools and libraries can circulate materials from their collections to distant students by the lawful use of file-sharing technology.

Of course, P2P applications also can be used for illegal activities. The unauthorized sharing of copyrighted materials is called infringement, and it is a violation of federal copyright law. Whenever you share copyrighted materials without legal authorization – including music, films, graphics, publications, etc. – you can be liable for copyright infringement.

- **How do I know whether something that I download from the Internet is copyrighted?**

In the United States, virtually all works created since 1922 are protected by copyright, regardless of the medium in which they appear. No registration, copyright notice or other formalities are required for copyright protection. Copyright protection occurs automatically, as soon as a creative work is expressed in a tangible medium of expression. Publications, photos, graphics, films, music, software and multi-media works all are types of works protected by copyright that can be accessed over the Internet.

- **What's the problem if I don't make any money by file-sharing?**

Copyright owners have exclusive property rights under the law to use, copy and distribute their works. These exclusive rights include the digital transmission of audio works, and the copying, distribution, public performance or display of

copyrighted works in any and all media. While it is true that the owner of a legally-obtained book, CD or DVD can give it away, loan it, lease it and sell it without violating the copyright law, online file-sharing is not the same thing. The technical processes involved in uploading, downloading and providing digital access and transmission requires the creation of new copies of the work, and involves the exercise of one or more of the copyright owner's exclusive rights. Under the copyright law, the owner's permission or other legal authorization is required before using any of these exclusive rights, regardless of whether or not the P2P user charges a fee for file-sharing.

- **Can't I freely duplicate copyrighted materials so long as I include the original copyright notice and acknowledge the author?**

No. Including attribution of authorship and copyright notice is always advisable; but that act alone is not a substitute for obtaining the copyright owner's permission, if required.

- **How do I know whether or not I am legally authorized to upload and share materials that I access online?**

Frequently, the copyright owner will post online "terms of use" that permit limited sharing or other use of their materials. If the site from which you access copyrighted materials is not posted by the copyright owner, or if the site does not include such terms of use, it is not a good idea to assume that the material can be shared. A safer alternative than downloading and distributing the materials yourself, is to provide a link to an outside site where the materials have made accessible by the copyright owner. Providing a link to such materials is not copyright infringement unless you know, or have reason to know, that the site is unauthorized.

- **Doesn't Fair Use protect me if I share copyrighted works online for educational purposes?**

Maybe. Fair use is an important safeguard that protects the public's right to use reasonable portions of copyrighted works for constitutionally-favored activities such as research, education, criticism and commentary. It is not an exemption for every use that might be deemed "educational," however. Fair use merely provides a defense to copyright infringement, and requires the balancing of four separate factors set forth in the U.S. Copyright Act at 17 USC § 107. An overview of Fair Use and the UA's Fair Use Checklist can be accessed on the Office of Student Computing Resources (OSCR) web page, http://oscr.arizona.edu/about_copyright

- **Is it legal to post music that is no longer "in print"?**

Just because a work (music, publication, film, or any other medium) is out of print does NOT mean that the work is in the public domain. Currently, the term of copyright protection in the United States is set by statute as a period of years.

As a general rule, for works created after January 1, 1978, copyright protection lasts for the life of the author plus an additional 70 years. For an anonymous

work, a pseudonymous work, or a work made for hire, the copyright endures for a term of 95 years from the year of its first publication or a term of 120 years from the year of its creation, whichever expires first. For works first published prior to 1978, the term will vary depending on several factors. For help in determining whether the copyright term of a particular work may have expired, see the Copyright Office Information Circular 15a, <http://www.copyright.gov/circs/circ15a.html>

If a musical composition or recording (or any other copyrighted work) is not in the public domain, then you need to get permission from the copyright owner before you post it, unless fair use or a statutory exemption applies. Because it can be difficult or impossible to locate the authors of out-of-print works for purposes of obtaining permission, Congress has considered enacting "Orphan Works" legislation. That legislation would establish a form of compulsory license to allow such works to be used without risk of copyright infringement. As of the date of this posting, however, Orphan Works legislation has not been enacted. For more information, see the website of the U.S. Copyright Office at <http://www.copyright.gov/orphan/>

- **What can happen to me if I infringe someone's copyright?**

Liability for copyright infringement can be monetary, with statutory damages ranging from \$200.00 (for totally innocent infringement) to \$150,000.00 or more per infringement (for willful or intentional violations). In some cases -- for example, when copy protection technology is circumvented -- criminal prosecution and fines of up to \$500,000.00 per infringement may result.

Recently, the Recording Industry Association of America (RIAA) has entered into pre-litigation settlements of claims involving unlawful file-sharing. The settlement amounts paid to RIAA have averaged between \$3000 and \$5000 per student. In egregious cases involving large numbers of recordings, however, that amount can be much higher; the Associated Press reported that one student received a pre-litigation settlement offer from RIAA demanding \$590,000 in payment.

Apart from possible legal action by the copyright owner, anyone who uses University's computer systems or networks for copyright infringement violates University policies. That can lead to disciplinary hearings and sanctions under the Student Code of Conduct, <http://dos.web.arizona.edu/uapolicies/cai1.html>, including the suspension or termination of campus computing privileges.

- **What can I do if I receive a copyright infringement complaint against me? Are there any organizations available to UA students that provide legal services at little or no cost?**

If you are sued or receive a subpoena (a "subpoena" is a court order to produce documents or information in connection with litigation), you should consult with your own attorney. The University cannot defend you against copyright

infringement claims or represent you if you are served with a subpoena. However, if you are a current University of Arizona student, you can get legal advice from the attorney at ASUA Legal Services (<http://legal.asua.arizona.edu/>). Unfortunately, we know of no free or low-cost legal services that handle copyright infringement defense work, and the cost of defending against these type claims is likely to be significant.

- **Where can I find more information about the University's copyright policies?**

The home page The University of Arizona's website, www.arizona.edu, includes a link at the bottom of the page titled "Security, Privacy and Copyright." That link will take you to a page that provides links to University policies related to copyrights and computer use on campus, and to sites that provide general copyright information.

- **How would anyone find out what I'm doing on my own computer? Isn't that my private information?**

The Internet is not a private medium of communication; and technology is available to copyright owners that allows them to track uses of their works online. Associations that represent groups of copyright owners, such as MPAA, RIAA and CCC collectively represent hundreds of thousands of individual copyright owners, and are vigilant about tracking down infringement on behalf of their members. Some new technologies allow online content to be embedded with digital watermarks, unique code patterns that identify the copyright owner of a work and that survive uploading, downloading, copying and distribution of the work.

Legal procedures made available under the Digital Millennium Copyright Act ("DMCA") enable copyright owners to easily obtain court-ordered subpoenas, requiring the online service provider (including, for example, the University) to deliver computer records and identify users of the computer network who allegedly are infringing copyrighted materials.

- **Does the University monitor campus use of P2P file sharing networks?**

The University of Arizona, via network control operations at CCIT, takes an active role in monitoring campus use of P2P file sharing networks on the University's computing systems. CCIT periodically scans for activity specific to P2P applications, and informs network managers of high levels of P2P traffic. If a legal purpose for the traffic cannot be determined, the University's network control operations will uninstall the software.

- **Why should the University be concerned about how I use my computer?**

Under copyright law, the providers of online computer services -- such as the University -- can be held strictly liable for infringement by network computer

users and subscribers, even if they have no knowledge of those activities. This rule was modified by the Digital Millennium Copyright Act (“DMCA”) which provides the service provider with a safe harbor against liability for user infringement if certain actions are taken, including the prompt removal of infringing content after receipt of a DMCA notice by a copyright owner. The University also may be required to provide information related to the use of its computer networks to copyright claimants under court-ordered subpoenas (a “subpoena” is a court order to produce documents or information in connection with litigation).

In addition to the threat of potential copyright infringement liability, the University also must be concerned with excessive and inappropriate use of computer bandwidth. Regular downloading and sharing of films, music and similar content can overburden the university’s network services and disrupt or delay computing services to all users on campus. For more information, see the University’s policy on the Acceptable Use of Computers and Networks at <http://security.arizona.edu/index.php?id=856>

- **What is the Digital Millennium Copyright Act (DMCA)?**

The DMCA amended the U.S. Copyright Act of 1976 to address copyright issues arising from the use of digital media. One section of the DMCA makes it a criminal act to circumvent copy protection technologies, punishable by imprisonment and heavy fines of up to \$500,000.00 per infringement. 17 USC § 1201. Another section of the DMCA created a safe harbor for online service providers (“OSPs”) to protect OSPs against liability for copyright infringement by those who use their computer networks. 17 USC § 512. This DMCA safe harbor includes a “notice and take-down” procedure by which a copyright owner can demand that the OSP, as a condition for the benefits of the safe harbor, remove certain types of infringing materials from the OSP’s computer networks. Copyright owners also benefit from expedited court procedures provided in the DMCA that are useful for identifying and suing individual infringers. A more extensive discussion of the DMCA is available at the web page of the UA Office of the General Counsel, http://ogc.arizona.edu/pate_issues.html

- **What happens when the University receives a DMCA takedown notice?**

As required by the DMCA, the University has designated a copyright agent who receives DMCA takedown notices from copyright owners. In such cases, the University’s DMCA copyright agent works with CCIT to locate the individual(s) involved and remove the allegedly infringing content from the University network. Students involved in infringing activities are subject to disciplinary action and sanctions through the Dean of Students Office under the Student Code of Conduct, <http://dos.web.arizona.edu/uapolicies/cai1.html>. Repeat offenders may have their University computer accounts terminated or suspended.

- **Has the University received subpoenas under the DMCA requiring it to turn over information about students who are potential infringers?**

The University of Arizona has been served with subpoenas issued in federal district court pursuant to the DMCA, requesting the identities of students who allegedly have infringed copyrights through use of the University's computer network. In such cases, the University has provided the students with two weeks' notice, as required by FERPA (Family Educational Rights & Privacy Act), before releasing student identifying information in response to the subpoenas.

- **Who are the MPAA and the RIAA? Are they spying on me?**

Major owners of copyright materials -- including movie studios, record labels, software and entertainment companies -- all routinely use "sniffers" (technology that detects patterns of computer use that are consistent with downloading and sharing movies, songs and other content). The interests of these copyright owners are protected by trade and advocacy organizations like the MPAA and RIAA.

The MPAA (Motion Picture Association of America) is an advocacy organization that represents the American motion picture, home video and television industries. The association supports strong legal protection of audio/visual works and fights copyright infringement around the world. It promotes the adoption of more protective federal copyright legislation, and also seeks to educate students, parents and teachers about copyright protection and awareness. More information is available at its website. See: <http://www.mpa.org/>

The RIAA (Recording Industry Association of America) is a trade association that represents the U.S. recording industry. Its stated mission is to assist the recording industry to thrive, which includes advocating for changes in the federal copyright laws, and taking action to protect copyrights against piracy and infringement. The RIAA has been very active in attempting to monitor and stop illegal music down-loading on campuses. See: <http://www.riaa.com>

- **Why does the RIAA focus on music file-sharing on campuses?**

Based on its estimates, RIAA believes that the U.S. recording industry loses hundreds of millions of dollars through unlawful downloading of music, and that college campuses are a hotbed of infringement. According to RIAA's statistics, "more than half of the nation's college students frequently download music and movies illegally through unlicensed P2P networks." As a result, the RIAA in the past few years has stepped up its efforts to address piracy on campuses -- by suing suspected infringers, and by seeking the cooperation of university administrators in controlling infringement. RIAA has also advocated in Congress for legislation that would require universities to adopt technological measures to block or curb peer-to-peer file sharing. The RIAA's website explains its legal positions and the actions it is taking to stop infringing use of music recordings on campuses. <http://www.riaa.com/faq.php>

- **Are any legal music downloading services available at The University of Arizona?**

Record companies have licensed digital partners that offer download and subscription services, including legitimate peer-to-peer and pod-casting services. The University of Arizona has an agreement with Ruckus, an online music service, to provide free, legal downloads to any UA student with a valid UA email address. You can register at www.ruckus.com and begin downloading immediately, Ruckus is not compatible with Mac operating systems, iPods, and some MP3 devices. Downloads are playable only as long as you are enrolled as a student at UA. The OSCAR webpage http://oscr.arizona.edu/about_copyright also contains links to several legal sites, many of them offering free media downloads.

- **Can P2P applications damage my computer, or harm the computer network?**

Some P2P applications can quickly use up your computer's available bandwidth quota and can degrade your computer's performance. The constant transfer between users of content-rich files (such as movies or music) can over-burden the University's network system and cause slowdowns or disruptions in service. Computer viruses can be spread via P2P file sharing over the Internet. To protect yourself, update your anti-virus programs regularly and make sure that your P2P applications do not permit outsiders to access to your computer's storage or computing capabilities.

- **Can a P2P application cause my computer to share files, or provide access to my personal information, even if I didn't set it up to do so?**

Personal information that is stored in your computer files may unintentionally be made available to others by installing and running a file-sharing application that includes spyware. Some P2P applications make your computer accessible as a computing or storage resource for use by outside entities, including file-sharing networks. Make sure that you know which files and data your P2P application can access and make available to others.

- **How can I get more information about protecting myself against unintended uses of my computer through P2P applications? How can I disable P2P file sharing, configurations and prevent uploading to other users?**

The UA web page <http://security.arizona.edu/index.php?id=773> provides information about computer security and links to sites with helpful information.

- **Where can I find other resources?**

See the copyright information links provided through The University of Arizona home page, at "Security, Privacy and Copyright" (bottom of the page).

The Office of Student Computing Resources (OSCR) web page, http://oscr.arizona.edu/about_copyright contains up-to-date information on

copyright and file sharing issues, as well as links to informational sites and a variety of legal downloading sites.

Additional information can be found at the following sites:

- U.S. Copyright Office: <http://www.copyright.gov/>
- ASUA Legal Services:
 - <http://legal.asua.arizona.edu/>
- Copyright Guide – UA Library:
 - <http://www.library.arizona.edu/help/tutorials/copyright/index.html>
- Intellectual Property – Office of Technology Transfer:
 - http://ott.web.arizona.edu/about_IP.php
- Office of the General Counsel – Legal Information / Intellectual Property
 - http://ogc.arizona.edu/page_issues.html
- University of Arizona Policy on the Acceptable Use of Computers and Networks:
 - <http://security.arizona.edu/index.php?id=856>
- Office of Student Computing Resources – Copyrights and P2P File Sharing
 - http://oscr.arizona.edu/about_copyright